

December 12, 2005

Sharon L. Summers  
Policy & Program Development Unit  
Division of Medicaid and Medical Assistance  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, De. 19720-0906

RE: DMMA Prop. LTC Institutional & Community Spouse Reg. [9 DE Reg. 859  
(December 1, 2005)]

Dear Ms. Summers,

The Developmental Disabilities Council understands that DMMA proposes to amend the definitions of “institutional spouse” and “community spouse” in the context of its long-term care and spousal impoverishment standards. We have the following observations.

First, both proposed Sections 20910.1 and 20910.2 “carve out” “Assisted Living Waiver” as a distinct program from “Home and Community Based Services”. This is inconsistent with attached Section 20100 which includes “Assisted Living Waiver” as a form of HCBS. This creates an unnecessary inconsistency in the regulatory scheme.

Second, the attached Section 3710 of the CMS State Medicaid Manual allows application of the long-term care and spousal impoverishment standards to §1915 (c ) HCBS waiver participants. Delaware accepted this option in 1993. See attached Section 20900. By analogy, it may be inappropriate to define community spouse as someone participating in HCBS programs apart from §1915(c ) waivers. Specifically, the reference to “any of the Long Term Care Medicaid programs such as...” may be overbroad since it encompasses more than §1915(c ) waivers. The CMS definition of “community spouse” in attached Section 3710 is simply a spouse “not living in a medical institution or nursing facility.” There is no authorization to limit “community spouse” to someone receiving any form of Medicaid LTC assistance.

The Developmental Disabilities Council thanks you in advance for your consideration of our comments. Should you have questions please contact our office at 739-3333.

Sincerely,

Jamie Wolfe  
Chair

cc. Governor’s Advisory Council for Exceptional Citizens  
State Council for Persons with Disabilities